IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2360 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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PUNARAM HIRAJI VISHNOI

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 2360 of 2001

MR YOGESH S LAKHANI for Petitioner No. 1

MR KT DAVE AGP for Respondent No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 23/08/2001

ORAL JUDGEMENT

1. By filing this petition under Article 226 of the Constitution, petitioner who has been detained by the District Magistrate, Banaskantha at Palanpur, in exercise of his powers conferred under Section 3 (2) of the Gujarat Prevention of Anti Social Activities Act, 1985

('the Act' for short), by order dated January 16, 2001 has challenged the said order and prayed to issue an appropriate writ, order or direction quashing and setting aside the order of detention and also prayed to set him at liberty forthwith.

2. From the averments made in the petition as well as in the impugned order, it is manifest that the petitioner has been detained for the alleged breach of the provisions of the Act as one case vide CR No.5028 of 2001 is registered with Deesa City Police Station against the petitioner for commission of the offences under the Bombay Prohibition Act. It is also stated in the said order that on the basis of the statement of the petitioner recorded by the police officer in the said criminal case which inter alia discloses that the petitioner with Devabhai Babulal Vishnoi and Sujanaram Virdaramji Vishnoi has started business of illegally importing foreign liquor from the adjoining State for the last three months. Therefore, the detaining authority has passed the order in exercise of the powers conferred under Section 3 (2) of the Act for maintaining the public order.

3. Mr. Lakhani, learned advocate for the petitioner has raised several contentions. However, he has restricted his contentions to one ground only, that is, under the guise of maintenance of public order, the detaining authority has passed the detention order on a solitary incident alleging that one FIR for the commission of the offences under the Bombay Prohibition Act is registered against the petitioner and thereby the petitioner has violated the public order and the petitioner is acting prejudicial to the maintenance of public order. Mr. Lakhani further contended that there is no statement of confidential witnesses whereby it can be said that activity of the petitioner is adversely affecting the public order. At the best it may be a question of maintenance of situation of law and order and not public order which can be taken care of by the ordinary course of law by putting criminal law into motion. Therefore, the order of detention is liable to the quashed and set aside.

4. I have considered the submissions made by Mr. Lakhani learned advocate for the petitioner and Mr. K.T. Dave, learned AGP for the respondents. I have also perused the averments made in the petition as well as the impugned order recorded by the detaining authority.

5. There is no dispute about the fact that against

the petitioner one case is registered vide CR No. 5028 of 2001 with Deesa City Police Station for commission of offences under the Bombay Prohibition Act. Statements of the witnesses were recorded by the investigating officer in connection with the said crime. It is also true that the petitioner's own statement was also recorded wherein he has categorically stated that he has started business of illegal business of importing liquor illegally with one Devabhai and Sujanbhai for the last three months. In the impugned order, the District Magistrate has stated that detention of the petitioner was necessary with a view to maintain the public order. Mr. Dave, learned APP has fairly stated that against the petitioner only one criminal case is registered and, therefore, there is no question of maintenance of public order. At the most it can be said that it is a question of maintaining law and order which can be taken care of by ordinary course of law by putting criminal law into motion. Seen in the above context, the impugned order passed by the detaining authority is required to be quashed and set aside on this ground alone.

6. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention dated January 16, 2001 is quashed and set aside. The petitioner - detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. D.S. permitted.

23.8.2001. (A.M. Kapadia, J.)

(karan)